

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

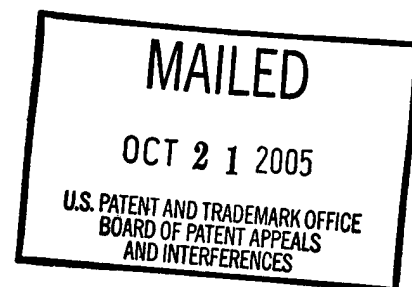
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHYLLIS LEITHEM, CHARLES A. KREMERS, W. PAUL HARRELL,
STEPHEN LEWIS, KARL D. SEARS, QUAN HE and PETER R. ABITZ

Appeal No. 2005-2682
Application No. 09/334,125

ON BRIEF



Before KIMLIN, WALTZ and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 61 and 62. Claim 61 is illustrative:

61. A method for making an absorbent composite useful for personal hygiene articles which comprises: treating a wood fiber pulp containing wood fibers with a base at a temperature ranging from 15°C. to about 60°C. thereby forming a treated wood fiber pulp containing wood fibers; fluffing the treated wood fiber pulp to form an absorbent sublayer material comprised of fluffed base-treated wood fiber pulp; providing at least one fluid permeable topsheet layer and at least one substantially fluid impermeable backsheet layer; and interposing the sublayer material between the topsheet layer and the backsheet layer wherein

Appeal No. 2005-2682
Application No. 09/334,125

the treated wood fiber pulp is not subjected to chemical crosslinking.

The examiner relies upon the following references as evidence of obviousness:

Novak	2,083,575	Jun. 15, 1937
Pociluyko	3,658,064	Apr. 25, 1972

Appellants' claimed invention is directed to a method for making an absorbent composite that is used in making personal hygiene products which comprises fluffing wood fiber pulp that has been treated with a base, and using the fluffed pulp to form an absorbent sublayer between a permeable topsheet and a fluid impermeable backsheet. The base treated pulp is not subjected to chemical crosslinking. According to appellants, "it has been conventional to use chemical crosslinking to increase the stiffness of the wood fiber pulp fibers, so that a fiber matrix made from them retains its bulk and pore volume when wet, thereby enhancing its absorbency" (page 4 of principal brief, second paragraph). Appellants maintain that eliminating the chemical crosslinking of the pulp, and its expense, is the expressed objective of the present invention.

Appealed claims 61 and 62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pociluyko in view of Novak.

Appellants submit that "[c]laims 61 and 62 stand or fall together" (page 5 of principal brief, last paragraph). Accordingly, claim 62 stands or falls together with claim 61.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we agree with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of Section 103. Accordingly, we will sustain the examiner's rejection.

There's no dispute that Pociluyko, like appellants, discloses a method for making an absorbent composite useful for personal hygiene products comprising interposing a fluffed pulp layer in between a fluid permeable topsheet layer and a fluid impermeable backsheet layer. Pociluyko is silent with respect to whether the pulp layer is subjected to chemical crosslinking. However, notwithstanding whether Novak discloses a method of making fluff pulp, as urged by the examiner, we find that it would have been obvious for one of ordinary skill in the art to make the fluff layer-containing composite of Pociluyko without chemically crosslinking the pulp. Since appellants acknowledge that it was known in the art to make wood pulp fluff by the claimed method, with the exception of including chemical

crosslinking,¹ we find that it would have been obvious for one of ordinary skill in the art to perform the known technique in making the fluff pulp of Pociluyko, without the chemical crosslinking. It is well settled that the elimination of a feature disclosed by the prior art along with its attendant function and advantage is a matter of obviousness for one of ordinary skill in the art. In re Thompson, 545 F.2d 1290, 1294, 192 USPQ 275, 277 (CCPA 1976); In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975); In re Marzocchi, 456 F.2d 790, 793, 173 USPQ 228, 229-30 (CCPA 1972); In re Larson, 340 F.2d 965, 969, 144 USPQ 347, 350 (CCPA 1965); In re Keegan, 331 F.2d 315, 319, 141 USPQ 512, 515 (CCPA 1964); In re Porter, 68 F.2d 971, 973, 20 USPQ 298, 301 (CCPA 1934). See also In re Edge, 359 F.2d 896, 899, 149 USPQ 556, 557 (CCPA 1966). In the present case, it would have been obvious for one of ordinary skill in the art to omit the step of chemical crosslinking in making the fluff pulp

¹Appellants state that "[t]he **Chatterjee** reference cited by the Examiner describes the same procedure for making wood pulp fluff at **Chatterjee**, column 6, lines 18-34" (page 7 of principal brief, first paragraph). We note, however, that U.S. Patent No. 3,392,209, cited at page 3 of the principal brief, is neither a patent to Chatterjee nor the patent number cited for Chatterjee on appellants' Information Disclosure Statement. Furthermore, the cited portions of Chatterjee appearing in the principal and reply briefs do not correlate to U.S. Patent No. 4,105,033 to Chatterjee cited on the IDS.

along with the benefits described by appellants, namely, increasing the stiffness of the pulp fibers so that the fiber matrix retains its bulking and pore volume when wet, thereby enhancing its absorbency (see page 4 of principal brief, second paragraph). Appellants have not established on this record that they have retained the advantages of chemical crosslinking without incurring its expense, or have achieved unknown advantages which outweigh the loss of the known benefit of chemical crosslinking. It would appear that appellants have done nothing more than eliminate a costly process step in the prior art without demonstrating that they obtain a product that is at least comparable in quality to the product of Pociluyko and the admitted prior art.

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the prior art.

Appeal No. 2005-2682
Application No. 09/334,125

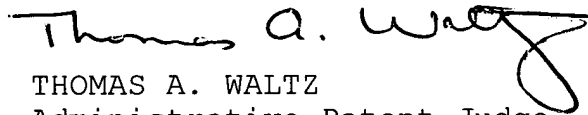
In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



EDWARD C. KIMLIN
Administrative Patent Judge



THOMAS A. WALTZ
Administrative Patent Judge



CATHERINE TIMM
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

ECK:hh

Appeal No. 2005-2682
Application No. 09/334,125

KRAMER, LEVIN, NAFTALIS & FRANKEL, LLP
INTELLECTUAL PROPERTY DEPT.
1177 AVE. OF THE AMERICAS
NEW YORK, NY 10036